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No.

# In the Supreme Court of the United States

OCTOBER TERM, 1987

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

MAUREEN A. STAPLES AND MICHAEL P. STAPLES

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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38 pp

## QUESTION PRESENTED

Whether a payment to the Church of Scientology for auditing or training sessions is deductible from taxable income as a "contribution or gift" under Section 170 of the Internal Revenue Code.

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# In the Supreme Court of the United States

OCTOBER TERM, 1987

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No.

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

MAUREEN A. STAPLES AND MICHAEL P. STAPLES

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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The Solicitor General, on behalf of the Commissioner of Internal Revenue, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

## OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-9a) is reported at 821 F.2d 1324. The order and decision of the Tax Court (App., *infra*, 11a) is not reported.

## JURISDICTION

The judgment of the court of appeals was entered on July 1, 1987. A petition for rehearing was denied on September 24, 1987 (App., *infra*, 10a). On December 12, 1987, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including February 20, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTES INVOLVED

Section 170 of the Internal Revenue Code (26 U.S.C.) is set forth in pertinent part in a statutory appendix (App., *infra*, 23a-24a).

## STATEMENT

1. Respondents paid $2,928 to a branch of the Church of Scientology in 1975 and claimed that payment as a charitable deduction on their joint income tax return under Section 170 of the Internal Revenue Code,[1] which permits a deduction for a "contribution or gift" to certain eligible donees (see I.R.C. § 170(c)). On audit, the Commissioner disallowed that deduction and determined a tax deficiency of $302.80. C.A. Addendum 8. Respondents filed a petition in the Tax Court for review of the Commissioner's determination. There was no trial in the Tax Court, however, or any other evidentiary submission. Instead, the parties entered into a stipulation to be bound by "any relevant findings of fact and conclusions of law" (excluding those relating to "subjective intent") to be made by the Tax Court in three consolidated "test" cases that were to be tried. The stipulation further provided that the record in the test cases, "to the extent relevant," would be deemed part of the record in this case for the purpose of appeal. See C.A. Addendum 11-12.[2] After the Tax Court decided the test cases in favor of the Commissioner (*Graham* v. *Commissioner*, 83 T.C. 575 (1984), aff'd, 822

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[1] Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

[2] The government entered into the same stipulation with numerous other taxpayers who had filed petitions in the Tax Court challenging the denial of a charitable deduction for payments to the Church of Scientology.

F.2d 844 (9th Cir. 1987), *reprinted in* App., *infra*, 12a-22a), the court entered an order and decision in the instant case "on the authority of *Graham*," finding a deficiency of $302.80 (App., *infra*, 11a).

2. In the *Graham* case, the Tax Court entered findings of fact pertaining to the general operation of the Church of Scientology. Like respondents, each taxpayer in *Graham* had made payments to a branch of the Church of Scientology[3] and had sought to deduct them on his or her income tax return as charitable contributions (App., *infra*, 16a-17a). These payments were made in exchange for "auditing" and "training" services provided by the Church. Scientologists believe that auditing helps an individual to achieve a higher level of "spiritual competence." Auditing is administered in a one-to-one session by a trained Scientologist who asks the auditee questions and measures his skin responses during the answers by means of an electronic device. "Training" courses study the doctrines of Scientology and are believed to yield further spiritual benefits. See *id.* at 14a; see also *id.* at 2a.

The Church charges a "fixed donation" for training and auditing, which is almost never waived.[4] The Church "operates in a commercial manner" in providing these services (App., *infra*, 16a). It promotes its services through lectures and radio and newspaper advertising. It gives a standard discount for payments made well in advance of the services to be rendered, and it issues refunds

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[3] The Church of Scientology consists both of a central branch, the "mother" Church of Scientology of California, and of numerous branches that are separate entities for tax purposes.

[4] Indeed, the Church's official policy letter states that "[p]rice cuts are forbidden under any guise" and "PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG." (App., *infra*, 15a n.6). Free services are awarded only to fully contracted staff, on the condition that the staff member fulfill the terms of his contract.

of those payments if the services ultimately are not received. *Id.* at 15a-16a.

In addition to these findings, the *Graham* decision was based on certain stipulations concerning the Church entered into for purposes of that litigation. The government did not contest that Scientology is a religion and that each Scientology organization to which the taxpayers paid money is a church within the meaning of Section 170(b)(1)(a)(i) of the Code and a tax-exempt religious organization under Section 501(c)(3) of the Code that is an eligible donee of charitable contributions under Section 170(c)(2) of the Code. App., *infra*, 13a.[5]

After making these factual findings, the Tax Court in *Graham* ruled that the payments in question were not contributions, but rather were non-deductible payments made to purchase services (App., *infra*, 17a-19a). The court explained that the payments "were not voluntary transfers without consideration, but were made with the expectation

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[5] The question of the validity of the "mother" Church's tax exemption was the subject of separate litigation in the Tax Court. The parties entered into the stipulations here in order to allow *Graham* and the other charitable contribution cases to go forward without awaiting the result of the tax exemption litigation, which would not necessarily affect the outcome of those cases. It was further stipulated in *Graham*, however, that the findings of fact in the tax exemption litigation and the record there could be incorporated in the *Graham* opinion (App., *infra*, 13a). After a lengthy trial, the Tax Court ultimately held that the "mother" Church failed to qualify as an exempt organization for the years 1970-1972 because it diverted its profits to its founder and other persons, violated public policy by conspiring to impede the collection of its taxes, and conducted virtually all of its activities, including auditing and training, for a commercial purpose. See *Church of Scientology of California* v. *Commissioner*, 83 T.C. 381, 415-423, 473-480 (1984), aff'd, 823 F.2d 1310 (9th Cir. 1987). That determination is not necessarily controlling, however, for other tax years or for other branches of the Church.

of receiving a commensurate benefit in return" (*id.* at 19a). The court continued (*ibid.*): "[W]here contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo."

3. In the present case, the court of appeals reversed the Tax Court's decision in the Commissioner's favor that had been entered on the authority of *Graham* (App., *infra,* 1a-9a). The court of appeals stated that the Tax Court in *Graham* had "ignored the fair impact of the government's stipulations" (App., *infra,* 3a) in ruling that the Church "operates in a commercial manner in providing these religious services" (*id.* at 16a) and in concluding that the payments were not contributions, but were payments made "with the expectation of receiving a commensurate benefit in return" (*id.* at 19a). See *id.* at 3a-4a. Rather, the court of appeals held that the stipulations required that auditing and training be viewed as "strictly religious practices" (*id.* at 4a).

Citing *United States* v. *American Bar Endowment,* 477 U.S. 105 (1986), the court of appeals acknowledged that "[a] payment generally cannot constitute a deductible charitable contribution if the taxpayer expected a substantial benefit in return" (App., *infra,* 4a). But the court of appeals accepted the taxpayers' contention that "no recognizable return benefit is received when the taxpayer through the payments was seeking strictly spiritual gain" (*ibid.*), and thus, contrary to the Tax Court, ruled that the claim of contribution could not be rejected on the ground that the payments were just part of a quid pro quo arrangement. The court stated that "[s]piritual gain to an individual church member cannot be valued by any measure known in the secular realm," and it analogized the practice of charging fixed fees for auditing and training to passing

the collection plate (*id.* at 6a-7a). The court held that religious benefits could not be regarded as "consideration" that would make a payment for them not a contribution, "both because of the inherently charitable nature of strictly religious practices and because of the incongruity of attempting to place a market value on religious participation" (*id.* at 7a). Accordingly, the court concluded, the commercial nature of the Church's practices provides no support for the Tax Court's decision. In the view of the court of appeals, the stipulations foreclosed any reliance on the "fixed donations as representing the value of its essential religious practices;" they "are not market prices set to reap the profits of a commercial moneymaking venture," but rather are simply the Church's "mechanism for raising funds from its members" (*id.* at 8a).

## REASONS FOR GRANTING THE PETITION

1. The decision below conflicts with the decisions of three other courts of appeals. Because of the stipulation to be bound by the findings of a test case, which was entered into by the parties in numerous cases where the taxpayers, like respondents, are seeking to take a tax deduction for certain payments made to the Church of Scientology (see page 2, *supra*), there have now been four decisions issued by different courts of appeals that have considered the question presented here on the basis of the same findings of fact. The other three courts of appeals have held, contrary to the court below, that these payments are not contributions within the meaning of Section 170 of the Code. *Hernandez* v. *Commissioner,* 819 F.2d 1212 (1st Cir. 1987), petition for cert. pending, No. 87-963; *Graham* v. *Commissioner,* 822 F.2d 844 (9th Cir. 1987); *Miller* v. *Commissioner,* 829 F.2d 500 (4th Cir. 1987). These conflicting holdings, if permitted to stand, will result in

disparate tax treatment for similarly situated taxpayers. There are more than 1,000 taxpayers raising the same claim as respondents who already have cases pending in the courts, and there are likely to be more in the future. Thus, consistent treatment of similarly situated taxpayers will not be achieved unless the conflict in the circuits on this issue is resolved.

The courts of appeals are also divided on the validity of the legal proposition upon which the court of appeals here rested its decision. That court concluded that, under the stipulation, the auditing and training received in exchange for the payments made by respondents must be viewed as "strictly religious practices" (App., *infra*, 4a, 8a). It held that, as a matter of law, participation in such religious practices cannot be treated as "a recognizable return benefit" for purposes of determining whether a particular payment is a contribution (*id.* at 4a, 8a). For that reason, the court found "inapplicable" (*id.* at 8a) the analysis set forth by this Court in *United States* v. *American Bar Endowment*, 477 U.S. 105 (1986), for determining whether a payment is a contribution under Section 170 of the Code. This Court there declared (477 U.S. at 118): "The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return."

The broad rule advanced by the Eighth Circuit—excepting payments for religious services from the analysis applicable to all other claims for a tax-deductible contribution—cannot be squared with the decisions of the other courts of appeals that have considered the question presented here. Each of the other courts has specifically rejected this proffered exception and held that the *American Bar Endowment* analysis is fully applicable in

the case of a payment for religious services. See *Hernandez,* 819 F.2d at 1217 ("no indication that Congress intended to distinguish the religious benefits sought by Hernandez from the medical, educational, scientific, literary, or other benefits that could likewise provide the *quid* for the *quo* of a nondeductible payment to a charitable organization"); *Graham,* 822 F.2d at 849 ("the deductibility of a contribution does not depend on whether the benefits received in return are secular or religious"); *Miller,* 829 F.2d at 504 ("no justification * * * for drawing a distinction between 'religious' and other services that produce intangible benefits"). Indeed, the court of appeals below expressly acknowledged its "difference with the First Circuit" in *Hernandez* on this point (App., *infra,* 7a). By the same token, the Fourth Circuit in *Miller* specifically noted that it "disagree[d] with some of [the] critical points" of the analysis of the Eighth Circuit in this case (829 F.2d at 504).

2. The court of appeals erred in holding that payments for religious services must always be treated as tax-deductible contributions, regardless of the circumstances surrounding the payments. Section 170 of the Code provides a tax deduction only for a "contribution or gift" to an eligible donee, and those terms contemplate a donation, not a payment in fair exchange for benefits. Neither the language of Section 170 nor any other evidence of congressional intent supports the conclusion that a payment for religious benefits is excepted from this rule. Rather, the deductibility of a payment to a religious organization, just like a payment to any other organization described in Section 170(c)(2), depends upon a factual inquiry into the surrounding circumstances to determine whether the payment is a donation or a purchase of benefits. In the situation presented here, the Tax Court and the three other

courts of appeals that have considered the issue correctly concluded that the same stipulated facts considered here demonstrate that the payments made by respondents were not "contributions". Rather, the aggressive marketing of the auditing and training services, the fixed price structure, and the inflexible connection between the payments and provision of the services all demonstrate a quid-pro quo relationship of payments in exchange for personal services; such payments do not give rise to a tax deduction (see, *e.g.*, *Miller* v. *Commissioner*, 829 F.2d at 504-505; *Graham* v. *Commissioner*, 822 F.2d at 849-850).

3. Because of the stipulations entered into between the taxpayers and the government in the cases presenting the issue decided below, only the Ninth Circuit's decision in *Graham* was based on an actual record that contains findings of fact directly pertaining to the case before the court. We believe that it would be preferable for this Court to consider the question presented here, if possible, in the concrete factual context that exists in *Graham*, rather than in the situation that exists in the cases, like this one, that were decided in the Tax Court on the basis of a stipulation to be bound by the findings in *Graham*. A petition for a writ of certiorari in *Graham* is due in this Court on February 29, 1988, and counsel for the taxpayers in that case has informally advised us that he intends to file a petition. We do not intend to oppose that petition. Accordingly, although we believe that resolution by this Court of the conflict in the circuits on the question presented here would be appropriate, we do not urge the Court to grant plenary review in this case, but rather suggest that this case be held pending disposition of the petition to be filed in *Graham*.

## CONCLUSION

The petition for a writ of certiorari should be disposed of as appropriate in light of the disposition of the pending petition for certiorari in *Hernandez* v. *Commissioner*, No. 87-963, and the petition for a writ of certiorari to be filed from the judgment in *Graham* v. *Commissioner*, 822 F.2d 844 (9th Cir. 1987).

Respectfully submitted.

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FEBRUARY 1988

**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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No. 86-1376

MAUREEN A. STAPLES AND
MICHAEL P. STAPLES, APPELLANTS

*v.*

COMMISSIONER OF INTERNAL REVENUE, APPELLEE

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APPEAL FROM THE UNITED STATES TAX COURT

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Submitted: February 12, 1987
Filed: July 1, 1987

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Before HEANEY, MCMILLIAN, and FAGG, Circuit Judges.

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FAGG, Circuit Judge.

Maureen and Michael Staples appeal the denial of a federal tax deduction sought for payments made to the Church of Scientology. The tax court, on the authority of *Graham v. Commissioner*, 83 T.C. 575 (1984), held that because the Staples' participation in their church's individualized religious practices was conditioned on the payment of set fees, those payments were not charitable contributions within the meaning of 26 U.S.C. § 170. The First Circuit recently accepted this argument in *Hernandez v. Commissioner*, No. 86-1276 (1st Cir. June 1, 1987). We,

however, cannot agree with the result reached by the tax court, and thus we respectfully diverge from the First Circuit's position.

Scientologists believe that in every person an immortal spiritual being exists independent of body and mind. A Scientologist becomes aware of this spiritual dimension through a process called "auditing." Auditing sessions are conducted individually, but are not individually tailored and are ritualistic in nature. Scientologists also take "courses" in which they study the doctrines, tenets, codes, policies, and practices of the Church, one of the doctrines being that spiritual gains result from this study itself. Participation in auditing sessions and doctrine courses is conditioned on payment of a set charge, known as a "fixed donation," from a schedule of fees established by the Church for all its activities.

The government has stipulated, for the purposes of this litigation, that Scientology is a religion and that the specific Scientology organization to which the payments were made was a qualified church and religious corporation under subsections 170(b)(1)(A)(i) and (c)(2) and exempt from taxation under 26 U.S.C. § 501(a). The government also has stipulated that the collection of fixed donations as a prerequisite to participation in the essential religious practices of Scientology is the Church's only method of actively soliciting contributions from members. At oral argument the government recognized that under the stipulations the parties agree Scientology auditing sessions and doctrinal courses are bona fide religious practices.

These stipulations are in important respects contrary to the conclusions reached in *Church of Scientology v. Commissioner*, 83 T.C. 381, 443, 473-80 (1984), in which the tax court held that the Church of Scientology of Califor-

nia was not operated exclusively for religious purposes under section 501(c)(3). A contribution to a church not operating exclusively for religious purposes is not deductible on an individual taxpayer's return. *See* 26 U.S.C. § 170(c)(2)(B). The government, however, according to its brief did not wish to await the outcome of the Ninth Circuit appeal in the *Church of Scientology* case to attack payments such as those made by the Staples. The government instead stipulated to the legitimacy of the Scientology church and its religious practices and argues that the Staples' payments, because of their timing, fixed amount, and mandatory nature, were not charitable contributions regardless of the religious nature of the benefit to the Staples. The first case to be submitted in this posture apparently was *Graham*, and the *Graham* stipulations have been adopted by consent of the parties as the record in this case as well as in *Hernandez* and in cases pending in eight other circuits (also, *Graham* itself is still on appeal before the Ninth Circuit).

This court is bound to treat as conclusive and to enforce all fairly made and voluntary stipulations of fact. *Skeets v. Johnson*, 816 F.2d 1213, 1215 (8th Cir. 1987) (en banc). The tax court in *Graham*, we believe, ignored the fair impact of the government's stipulations. For example, the court observed—contrary to the stipulation that Scientology is a qualified church—that "[t]he Church of Scientology operates in a commercial manner in providing these religious services. In fact, one of its articulated goals is to make money." 83 T.C. at 578; *cf.* Rev. Rul. 78-189, 1978-1 C.B. 68, 69 (Scientology fixed donations not deductible because auditing and courses are "general education or vocational training" for which payments are "somewhat comparable" to tuition). With the Church characterized as a commercial operation, the tax court had little trouble concluding that Scientology fixed donations "were not

voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return." *Graham*, 83 T.C. at 581. The stipulations, however, require that the religious nature of the Scientology activities at issue in these cases be recognized; *Graham* thus amounts to a holding that the deductibility under section 170 of payments relative to participation in bona fide religious practices will depend on the mechanism adopted by the church to solicit support from its member. Neither the tax court nor the government has cited a case in which a taxpayer has been denied a deduction for payments keyed to participation in strictly religious practices.

A taxpayer may take a deduction under section 170 for a gift or contribution to a qualified religious corporation. This does not mean, however, that any payment to a qualified church is deductible; rather, the payment must be examined to see whether it is a "gift" or "contribution" within the meaning of the statute. *Estate of Wood v. Commissioner*, 39 T.C. 1, 6 (1962). A payment generally cannot constitute a deductible charitable contribution if the taxpayer expected a substantial benefit in return. *United States v. American Bar Endowment*, 106 S. Ct. 2426, 2433 (1986); *see also id.* at 2434 ("The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration."). Thus, taxpayers have been denied deductions for their monetary support of church-run schools when the payments assumed the nature of tuition for the taxpayers' children. *E.g., Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972); *Winters v. Commissioner*, 468 F.2d 778 (2d Cir. 1972); *DeJong v. Commissioner*, 309 F.2d 373 (9th Cir. 1962).

The Staples urge, however, that no recognizable return benefit is received when the taxpayer through the payments was seeking strictly spiritual gain. For example,

the Internal Revenue Service has ruled that deductions should be allowed for pew rents and periodic church dues and building fund assessments, Rev. Rul. 70-47, 1970-1 C.B. 49; and the cases and legislative history in discussing payments which are not deductible generally have referred to a material, financial, or economic benefit being received in return. *E.g., Winters v. Commissioner*, 468 F.2d 778, 780, 781 (2d Cir. 1972); *Murphy v. Commissioner*, 54 T.C. 249, 253 (1970); H.R. Rep. No. 1337, 83d Cong., 2d Sess., *reprinted in* 1954 U.S. Code Cong. & Admin. News 4017, 4180; Rev. Rul. 76-232, 1976-1 C.B. 62, 62. As the Staples interpret section 170, a payment to a qualified church would still be a contribution even though the church, rather than passing a collection plate or seeking periodic pledges from its members, required the payment as a condition of participation in its essential religious activities, worship, or ceremonies.

A construction of section 170 sensitive to religious practices would be consistent with the policies underlying the statutory provision. *Cf. Helvering v. Bliss*, 293 U.S. 144, 151 (1934) (charitable contributions deduction not to be narrowly construed). "[I]n the case of a contribution to a charitable organization, the law's policy finds charity in the purposes and works of the qualifying organization, not in the subjective intent of the contributor." *Crosby Valve & Gage Co. v. Commissioner*, 380 F.2d 146, 147 (1st Cir.), *cert. denied*, 389 U.S. 976 (1967). Religious observances of any faith are considered under the law of charity to be of spiritual benefit to the general public as well as to the members of the faith, with the private benefit to individual participants being merely incidental to the broader good that is served. Rev. Rul. 71-580, 1971-2 C.B. 235, 236. The public benefit from religion remains and predominates regardless of whether church doctrines provide for traditional congregational worship or individual

worship as in Scientology or whether donations are voluntary or fixed. *See Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943) ("[T]he mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise.").

Congress was addressing two principal concerns when it limited section 170 charitable deductions to "contributions." First, Congress feared charitable organizations offering products and services in competition with those offered by business would gain unfair competitive advantage; and second; Congress recognized that when a contributor would receive a material quid pro quo, the amout of the donation available for the support of the charitable organization would be reduced by the cost of providing the tangible benefit. *See Haak v. United States*, 451 F. Supp. 1087, 1091 (W.D. Mich. 1978). Neither of these concerns is implicated when a contributor seeks only to participate in religious practice, regardless of whether payments are voluntary or mandatory, of a set amount or discretionary, or made before-the-fact or after. *Cf. Oppewal v. Commissioner*, 468 F.2d 1000, 1002 (1st Cir. 1972) ("Classification of a payment as a gift * * * should depend upon something more fundamental than the particular bookkeeping methods used by the [charitable] institution.").

Finally, as the Staples suggest in their brief, "our tax system does not treat religious services as commodities that are purchased in commercial transactions." Form sometimes is important in identifying a section 170 contribution because a payment appearing to be a purchase of an item of value creates a presumption that the transaction was not a donation. Rev. Rul. 67-246, 1967-2 C.B. 104, 105. Regardless of form, however, no similar presumption can arise when the item "purchased" was the right to participate in religious practice. Spiritual gain to an individual

church member cannot be valued by any measure known in the secular realm. As the tax court has stated, privileges arising from church membership "are not significant return benefits that have a monetary value within the meaning of section 170." *Murphy v. Commissioner*, 54 T.C. 249, 253 (1970). The establishment by a church of a set "price" for religious participation does not change the nature of the benefit of religion to the individual or to society. It the Scientologist "prices" were deemed to make participation in their religious services a material, financial, or economic benefit such that the Staples' payments were not contributions, then "the passing of the collection plate in church would make the church service a commercial project." *See Murdock v. Pennsyvlania*, 319 U.S. 105, 111 (1943).

In sum, we conclude that regardless of the timing of the payment or details of the church's method of soliciting contributions from its members, an amount remitted to a qualified church with no return other than participation in strictly spiritual and doctrinal religious practices is a contribution within the meaning of section 170.

This conclusion we believe embodies our difference with the First Circuit, which in *Hernandez* accepts participation in strictly spiritual and doctrine religious practices as "adequate consideration" to take a payment out of the category of "contributions." *See American Bar*, 106 S. Ct. at 2434. We are hesitant to accept this position both because of the inherently charitable nature of strictly religious practices and because of the incongruity of attempting to place a market value on religious participation. While society has recognized methods of assigning economic value to intangible return benefits such as adoption services and concert admissions, *see Hernandez*, slip op. at 8, it has not to this point extended this recognition to any system for expressing spiritual gain in monetary form. Cases involving

church-run schools use the cost of providing services to value the return benefit to taxpayers, *see id.*, slip op. at 8-9; but the benefit—education—is only religiously oriented. No case to which we have been cited values in that manner the strictly religious practices presented by the stipulations in this case.

Furthermore, these stipulations foreclose any reliance on the Church of Scientology's fixed donations as representing the value of its essential religious practices. Under the stipulations the fixed donations are not market prices set to reap the profits of a commercial moneymaking venture; rather, the Church of Scientology is a bona fide church which selected fixed donations as its mechanism for raising funds from its members.

Given our conclusion that participation in strictly religious practices is not a recognizable return benefit under section 170, the analysis in *American Bar* by its very nature is inapplicable to the situation before us. In *American Bar* the taxpayer received an indisputably tangible benefit with a measurable secular market value, namely insurance, in return for his payments to a tax-exempt charitable organization. The Court analyzed the case as one involving "dual payments"—that is, payments having the character both of contributions and of payments for valuable benefits received—and applied the rule that a taxpayer may deduct the portion of a dual payment which exceeds the market value of the tangible benefit. 106 S. Ct. at 2433-34 (citing Rev. Rul. 68-432, 1968-2 C.B. 104, 105). The specific question addressed by the Court was the value of the insurance to the taxpayer, *id.* at 2434, and the Court considered the taxpayer's intent to make a contribution as an element in determining whether the payment was in excess of the value received, *see* Rev. Rul. 67-246, 1967-2 C.B. 104, *cited in American Bar*, 106 S. Ct. at 2434. A dual payment valuation question cannot arise unless the

taxpayer has received a recognizable tangible benefit, and that benefit must be capable of segregation, through valuation, from the intangible charitable benefit to the taxpayer. The Staples having received no recognizable benefit, we have no dual payments in this case.

Because we hold that the Staples' payments to the Church of Scientology for participation in strictly religious practices were contributions within the meaning of section 170, we need not reach the constitutional arguments raised by the Staples. The order of the tax court is reversed.

**APPENDIX B**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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No. 86-1376

MAUREEN A. STAPLES, ET AL., APPELLANTS

*vs.*

COMMISSIONER OF INTERNAL REVENUE, APPELLEE

---

APPEAL FROM THE UNITED STATES
TAX COURT

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[Filed Sept. 24, 1987]

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Appellee's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

**APPENDIX C**

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

Docket No. 1693-79

MAUREEN A. STAPLES AND
MICHAEL P. STAPES, PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

**ORDER AND DECISION**

After due consideration of petitioners' Motion for Entry of Final Decision filed December 2, 1985, respondent's Notice of Objection filed December 23, 1985, and petitioners' Response to Notice of Objection filed January 7, 1986, and on the authority of *Graham v. Commissioner*, 83 T.C. 575 (1984), on appeal (9th Cir., Nov. 19, 1984), it is

ORDERED that petitioners' above-referenced Motion for Entry of Final Decision is granted. It is further

ORDERED and DECIDED that there is a deficiency in petitioners' income tax for the taxable year 1975 in the amount of $302.80.

/s/ Samuel B. Sterrett
SANUEL B. STERRETT
Chief Judge

Entered: MAR 6 1986

**APPENDIX D**

## UNITED STATES TAX COURT REPORTS

Docket Nos. 5837-76, 9384-79, 374-80

KATHERINE JEAN GRAHAM, ET AL.,[1] PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Filed October 15, 1984

STERRETT, *Judge:* In these consolidated cases, respondent determined deficiencies in petitioners' Federal income taxes as follows:

| *Docket No.* | *Petitioner* | *TYE Dec. 31—* | *Deficiency* | *Date of deficiency notice* |
|---|---|---|---|---|
| 5837-76 | Katherine Jean Graham[2] | 1972 | $316.24 | Apr. 7, 1976 |
| 9384-79 | Richard M. Hermann | 1975 | 803.00 | Apr. 4, 1979 |
| 374-80 | David Forbes Maynard | 1977 | 643.00 | Nov. 14, 1979 |

This issues before the Court are: (1) Whether payments made by petitioners to the various churches of Scientology[3] were deductible charitable contributions, and (2) whether denial of the claimed deductions would violate petitioners' constitutional rights.

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[1] Cases of the following petitioners are consolidated herewith: Richard M. Hermann, docket No. 9384-79; David Forbes Maynard, docket No. 374-80.

[2] Petitioner Graham was unmarried during the tax year in question. Subsequently, she married, and her married name is Mrs. Elliott.

[3] For convenience, these various churches of Scientology will be referred to as either the Church of Scientology or the Church.

## FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulations of fact, together with the exhibits attached thereto, are incorporated herein by this reference. The parties specifically stipulated to the entire record in *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984). All relevant findings of fact and court rulings from that case will be incorporated into this opinion. Since neither party argued to the contrary, it will be assumed that the Church of Scientology continued to operate at all relevant times in the same manner as it did in *Church of Scientology of California v. Commissioner, supra.*

For purposes of this litigation only, respondent did not contest petitioners' contentions that: (1) Scientology was at all relevant times a religion; (2) each Scientology organization to which petitioners paid money was at all relevant times a church within the meaning of section 170(b)(1)(A)(i),[4] and (3) Scientology was at all relevant times a corporation described in section 170(c)(2) and exempt from general taxation under section 501(a) as an organization described in section 501(c)(3).

Petitioners' residences at the time they filed their respective petitions in this case, and the places they filed their timely income tax returns for their respective years are as follows:

| *Petitioner* | *Residence* | *TYE Dec. 31 –* | *Appropriate office of IRS* |
|---|---|---|---|
| Graham | Honolulu, HA | 1972 | Honolulu, HA |
| Hermann | Los Angeles, CA | 1975 | Fresno, CA |
| Maynard | Rialto, CA | 1977 | Fresno, CA |

[4] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1954 as amended and in effect during the taxable years in issue.

Petitioners were at all relevant times Scientologists. Scientology[5] teaches that the individual is a spiritual being having a mind and a body. Part of the mind, called the "reactive mind" is unconscious. It is filled with mental images that are frequently the source of irrational behavior. Through the administration of a Scientology process known as "auditing," an individual, called a "preclear," is helped to erase his reactive mind and gain spiritual competence. Auditing is also referred to as "processing," "counseling," and "pastoral counseling."

Scientologists believe that they can attain benefits from auditing and training, but only in degrees or steps. These include levels called "Grades" and higher levels called "OT sections." The various steps or degrees of accomplishment are set forth in a chart entitled "Classification Gradation and Awareness Chart of Levels and Certificates."

A trained Scientologist, known as an "auditor," administers the auditing. He is aided by an electronic device called an "E-meter." This device helps the auditor identify the preclear's areas of spiritual difficulty by measuring skin responses during a question and answer session. These auditing sessions are offered in fixed blocks of time called "Intensives."

One of the tenets of Scientology is that, anytime a person receives something, he must pay something back. This is called the doctrine of exchange. The Church of Scientology applies this doctrine by charging a "fixed donation" for training and auditing. With few exceptions, these services are never given for free.[6] Thus, fixed donations are

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[5] For an indepth review of the Scientology religion and its structure, see *Church of Scientology of California v. Commissioner*, 83 T.C. 381 (1984).

[6] The Church of Scientology has a nine-volume encyclopedia of Scientology policy called the OEC series. Hubbard Communications

generally a prerequisite to a person's receiving auditing and training. These fixed donation payments constitute the majority of the Church of Scientology's funds, and are used to pay the costs of church operations and activities.

The general rates of the fixed donations for auditing in 1972 were as follows:

| | |
|---|---|
| 12½-Hour intensive | $625 |
| 25-Hour intensive | 1,250 |
| 50-Hour intensive | 2,350 |
| 75-Hour intensive | 3,350 |
| 100-Hour intensive | [7]4,260 |

In addition, the Church of Scientology offered two specialized types of auditing for a higher fixed duration—

| | |
|---|---|
| Integrity Process | $750 per 12½-Hour intensive |
| Expanded Dianetics | $950 per 12½-Hour intensive |

Members of the Church of Scientology are encouraged to make advance payments for Scientology courses. If payment is made well in advance of the services to be rendered, a discount of 5 percent can be obtained by the member. When a parishioner makes an advance payment,

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Office Policy Letter (HCO PL) Sept. 27, 1970 (Issue I), 3 OEC 89, describes the Church of Scientology's policy against free services and price cutting. It states:

> Price cuts are forbidden under any guise.
>
> 1. PROCESSING MAY NEVER BE GIVEN AWAY BY AN ORG. Processing is too expensive to deliver.
>
> * * * * *
>
> 9. ONLY FULLY CONTRACTED STAFF IS AWARDED FREE SERVICE, AND THIS IS DONE BY INVOICE AND LEGAL NOTE *WHICH BECOMES DUE AND PAYABLE IF THE CONTRACT IS BROKEN*. [Emphasis added.]

[7] Historically, the price of a 25-hour intensive was fixed at an amount equal to 3 months of pay for the average middle-class worker in the district of the Scientology Church providing the service.

the Church credits his account. Once the individual begins receiving a service, his account is debited. It is the Church of Scientology's policy to refund advance payments upon request at any time before services are received.[8]

The Church of Scientology operates in a commercial manner in providing these religious services. In fact, one of its articulated goals is to make money. This is expressed in HCO PL March 9, 1972, MS OEC 381, 384. It sets out the governing policy of the Church of Scientology's financial offices by exhorting these offices to "MAKE MONEY * * * MAKE MONEY. * * * MAKE MORE MONEY. * * * MAKE OTHER PEOPLE PRODUCE SO AS TO MAKE MONEY." The goal of making money permeates virtually all of the Church of Scientology's activities—its services, its pricing policies, its dissemination practices, and its management decisions.

The Church of Scientology promotes its services through free lectures, congresses, free personality tests, and handouts. Advertisements are placed in newspapers, magazines, and on the radio. These promotional activities are geared to be responsive to community concerns, which are determined from surveys.

In 1972, Graham made payments totaling $1,682 to the Church of Scientology, Hawaii, and to the Scientology and Dianetic Center of Hawaii. Of this amount, approximately $400 went towards training, the balance went for auditing. These payments were for the Hubbard Qualified Scientologist course (HQS), Communications course, and auditing. Some of the payments toward courses were for Graham's daughters, Karen and Laurel. When Graham made those payments, she expected to receive, and did

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[8] No evidence was produced with respect to the actual amounts, if any, of such refunds during the tax years in issue.

receive, the benefit of those services. On her 1972 income tax return, Graham deducted $1,682 as a charitable contribution.

In 1975, Hermann paid the Church of Scientology, American Saint Hill Organization (ASHO) $4,875. At the time Hermann made these transfers, he expected to receive Class 0 to 9 training. While Hermann did not take these courses, he did take other Scientology courses and has received auditing between 1974 and the present. On his 1975 income tax return, Hermann deducted $3,922 as a charitable contribution.

In 1977, Maynard paid the Church of Scientology, Mission of Riverside, $4,698.91 as advance payments for services. While Maynard did not receive any services in 1977, he made those remittances with the expectation of taking Interiorization Processing, Expanded Dianetics, and auditing. On his 1977 income tax return, Maynard claimed a $5,000[9] charitable contribution deduction.

In the respective notices of deficiency, respondent disallowed these claimed charitable contribution deductions. Respondent maintains that it was not established that the payments to the Church of Scientology were contributions or gifts rather than payments for services or merchandise.

## OPINION

### *Issue 1. Deductibility of Payments Made*

The taxpayer has the burden of proving that a particular payment is a "contribution or gift." *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934); *Welch v. Helvering*, 290 U.S. 111 (1933); Rule 142(a), Tax Court Rules of

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[9] This amount consisted of a $2,385 carryover from 1976 transfers and $2,615 for transfers in 1977.

Practice and Procedure. Petitioners argue that their remittances to the Church of Scientology met the statutory requirements of section 170, subsections (a) and (c), and thus were deductible charitable contributions. Respondent maintains that those payments were not "contribution[s] or gift[s]" within the meaning of section 170(c). Rather, he insists they were made to purchase services, i.e., a quid pro quo, and thus were nondeductible personal expenditures.

Section 170(a)(1) allows as a deduction any charitable contribution payment which is made within the taxable year. Section 170(c) defines the term "charitable contribution" as "a contribution or gift." Neither section 170 nor the regulations further elaborate on the meaning of "charitable contribution." This issue was addressed, however, in *DeJong v. Commissioner*, 36 T.C. 896 (1961), aff'd. 309 F.2d 373 (9th Cir. 1962). There, the Court stated—

> As used in this section the term "charitable contribution" is synonymous with the word "gift." * * * A gift is generally defined as a *voluntary transfer* of property by the owner to another *without consideration* therefor. If a payment proceeds primarily from the incentive of anticipated benefit to the payor beyond the satisfaction which flows from the performance of a generous act, it is not a gift. * * * [*DeJong v. Commissioner, supra* at 899. Citations omitted; emphasis added.]

Petitioners wanted to receive the benefit of various religious services provided by the Church of Scientology. The Church of Scientology, however, generally provided those services only if they were purchased. To encourage such purchases, the Church of Scientology gave a 5-percent discount to parishioners who made advance payments. A person who made an advance payment but

chose not to receive the services could request a refund of his money. Petitioners thus made payments to the Church in exchange for those services.

The record demonstrates clearly that these payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return. In addition, where contributions are made with the expectation of receiving a benefit, and such benefit is received, the transfer is not a charitable contribution, but rather a quid pro quo. *Haak v. United States*, 451 F. Supp. 1087, 1090-1091 (W.D. Mich. 1978).

Petitioners Graham and Hermann made payments for which they received religious services. They received a perceived benefit from their transfers. Petitioner Maynard made advance payments to the Church of Scientology. While he did not receive any religious services in 1977, his account was credited for his remittances. This credit entitled him to receipt of services in the future. It was that entitlement which constituted his receipt of a perceived benefit, or the quid pro quo.

Accordingly, none of the payments petitioners made were charitable contributions within the meaning of section 170(c). Instead, they were nondeductible personal expenditures.

*Issue 2. Constitutional Arguments*

Petitioners maintain that denial of the deduction interferes with their constitutional right to the free exercise of their religion. It is well established that there is no constitutional right to a tax deduction. Benefits granted to taxpayers, such as deductions for charitable contributions, are matters of legislative grace. *Interstate Transit Lines v. Commissioner*, 319 U.S. 590, 593 (1943); *New Colonial*

*Ice Co. v. Helvering, supra* at 440; *Winters v. Commissioner*, 468 F.2d 778, 781 (2d Cir. 1972), affg. a Memorandum Opinion of this Court. Further, denial of this deduction does not violate the free exercise clause of the First Amendment. *Parker v. Commissioner*, 365 F.2d 792, 795 (8th Cir. 1966), cert. denied 385 U.S. 1026 (1967); *Winters v. Commissioner, supra* at 781. The constitutionality of the denial of this deduction was well stated by the Supreme Court in *Cammarano v. United States*, 358 U.S. 498, 513 (1959)—

> Petitioners are not being denied a tax deduction because they engage in constitutionally protected activities, but are simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do under the provisions of the Internal Revenue Code. * * *

Respondent is not precluding petitioners from engaging in constitutionally protected activities. Petitioners may practice their beliefs; they just will not be subsidized for them.

Even if denial of the deduction interfered with petitioners' practice of their religious beliefs, not all burdens on religion are unconstitutional. *United States v. Lee*, 455 U.S. 252, 257 (1982). See also, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 163-166 (1944); *Reynolds v. United States*, 98 U.S. 145, 166-67 (1878). The limitation on religious liberty can be justified by showing that it is essential to accomplish an overriding governmental interest. *United States v. Lee, supra* at 257-258. The Supreme Court has stated that "Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax." *United States v. Lee, supra* at 260.

Petitioners also argue that denial of the deductions violates the establishment clause of the First Amendment.[10] Their argument is twofold. First, disallowance would result in disparate treatment of petitioners, in violation of the neutrality requirement of the First Amendment. Second, disallowance would be the result of excessive Government entanglement with religion, in violation of the First Amendment.

Petitioners place heavy emphasis on *Larson v. Valente*, 456 U.S. 228 (1982). In that case, Minnesota had enacted a statute imposing registration and reporting requirements on religious groups which solicited more than 50 percent of their contributions from nonmembers. The Supreme Court held that the statute violated the establishment clause of the First Amendment. In so doing, they rejected an argument that the statute was facially neutral and found instead that it made "explicit and deliberate distinctions between different religious organizations." *Larson v. Valente, supra* at 247 n. 23. The Court further mentioned that "The fifty percent rule of section 309.515, subd. 1(b), effects the *selective* legislative imposition of burdens and advantages upon particular denominations." *Larson v. Valente, supra* at 253-254.

The instant case is distinguishable from *Larson* because section 170, unlike the charitable solicitation law in *Larson*, does not make classifications among religions. Furthermore, unlike *Larson*, here there is no legislative history revealing overt discrimination. Finally, even if section 170 has the effect of advancing one religion more than another, that fact alone does not make the statute un-

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[10] Petitioners raised similar establishment clause arguments in *Church of Scientology of California v. Commissioner*, 83 T.C. at 447-454. While that case dealt with the constitutionality of sec. 501(c)(3), its rationale is fully applicable to sec. 170 and we incorporate herein by this reference that portion of the opinion.

constitutional. The establishment clause does not prohibit a statute from having a disparate impact on religious organizations provided the disparate impact results from the application of secular criteria. *Lynch v. Donnelly*, 465 U.S. ____, ____ (1984); *Gillette v. United States*, 401 U.S. 437, 452 (1971); *McGowan v. Maryland*, 366 U.S. 420, 442-444 (1961). Here the tests for determining the deductibility of claimed charitable contributions are based on secular criteria. Further, *Larson* is distinguishable from the case at bar because the section 170 classification bears equally upon all religious organizations. Thus, there is not the political divisiveness here that was prevalent in *Larson*. Accordingly, the argument of unconstitutionality under the establishment clause is rejected.

Finally, petitioners insist that denial of the claimed deductions was due to selective discriminatory action. They claim that their rights under the First Amendment and the equal protection component of the due process clause of the Fifth Amendment were violated. The evidence in this case does not demonstrate that any discriminatory action was taken against petitioners by respondent or any of his agents. Petitioners have failed to prove that violation of their rights occurred under either the First or Fifth Amendments.[11]

*Decisions will be entered for the respondent.*

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[11] This issue of selective enforcement was also raised and rejected in *Church of Scientology of California v. Commissioner*, 83 T.C. at 453-454.

## APPENDIX E

**Section 170 of the Internal Revenue Code (26 U.S.C.) provides in pertinent part:**

CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) **Allowance of Deduction.**—

(1) **General rule.**—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

• • • • •

(c) **Charitable Contribution Defined.**—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(1) A State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). * * *

* * * * *

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